

Rule 46

FEDERAL RULES OF APPELLATE PROCEDURE

- (3) **Order.** The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.
- (c) **Discipline.** A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

Rule 47. Local Rules by Courts of Appeals

(a) Local Rules.

- (1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with — but not duplicative of — Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.
- (2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.
- (b) **Procedure When There Is No Controlling Law.** A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

FEDERAL CIRCUIT RULE

- (d) **Government Attorney.** An attorney for any federal, state, or local government office or agency may appear before this court in connection with that attorney's official duties without formal admission to the bar of the court.
- (e) **Change of Name, Address, or Telephone Number.** An attorney admitted to the bar of this court must promptly notify the clerk of a change of name, address, or telephone number.
- (f) **Disciplinary Action.** Disciplinary action against an attorney will be conducted in accordance with the Federal Circuit Attorney Discipline Rules.

Rule 47.1. Sessions and Places of Holding Court

- (a) **Sessions.** Sessions of the court will be held as the court announces.
- (b) **Places of Holding Court.** The court may hold sessions in any place named and permitted in 28 U.S.C. § 48.

Rule 47.2. Panels

- (a) **Panels.** Cases and controversies will be heard and determined by a panel consisting of an odd number of at least three judges, two of whom may be senior judges of the court.
- (b) **Assignment of Cases.** Assignment of cases to panels will be made so as to provide each judge with a representative cross-section of the fields of law within the jurisdiction of the court.

Rule 47.3. Appearance

- (a) **Party and Amicus Curiae Must Be Represented; Pro Se Party; Attorney of Record; Of Counsel.** An individual (not a corporation, partnership, organization, or other legal entity) may choose to be represented by counsel or to represent himself or herself pro se, but may not be represented by a nonattorney. An individual represented by counsel, each other party in an action, each party seeking to intervene, and each amicus curiae must appear through an attorney authorized to practice before this court and must designate one attorney as the principal attorney of record. Any other attorney assisting the attorney of record must be designated as “of counsel.” Every attorney named on a brief must enter an appearance. Documents that are sent by the court will be sent only to the principal attorney of record.
- (b) **Petition for Writ of Mandamus or Prohibition.** The attorney whose name, address, and telephone number appears first on a petition for a writ of mandamus or a writ of prohibition will be deemed attorney of record.
- (c) **Appearance; Contents; Service of Papers Before Appearance; Withdrawal of Counsel.**
- (1) **Appearance.** Each attorney must promptly file an entry of appearance on the form provided by the clerk. A pro se party must also file an entry of appearance unless all the necessary information appears on the petition for review or notice of appeal. Any attorney retained for the case later must file an appearance within 10 days after being retained.

- (2) **Contents.** The appearance must include the name of the party or parties represented and the name, address, and telephone number of the attorney or the pro se party. An attorney's appearance must show the name of the law firm or public or quasi-public legal office with which the attorney is associated. A new notice of appearance must be filed and served any time the information on record changes.
- (3) **Service of Papers Before Appearance.** Until an attorney files a written entry of appearance, service of all papers must be made on the attorney of record in the proceeding below at the last known address. In a pro se case, unless an attorney files an entry of appearance, service of all papers must be made on the pro se party at the last known address.
- (4) **Withdrawal of Counsel.** An attorney other than a government attorney who has been properly replaced, may not withdraw from representing a party without notice to the party, filing a motion with the court, and obtaining the court's consent.
- (d) **Signature.** At least one copy of each brief, petition, motion, application, notice, or other paper presented for filing must contain the original signature in ink of the pro se party or the attorney who has entered an appearance. In a brief that has been commercially printed, the printed name in lieu of a signature will be deemed an original signature. When no attorney appearing for a party is available to sign, any person having actual authority may sign on behalf of the attorney of record, attaching an affidavit of authority or an unsworn declaration of authority under penalty of perjury pursuant to 28 U.S.C. § 1746.

Practice Notes

Form for Entry of Appearance. See Appendix of Federal Circuit Forms, Form 5, for a form for entry of appearance.

Filings Requiring Signature and Appearance. After docketing, the clerk will accept no filing required to be signed unless it is signed by a pro se party or an attorney – who is a member of the bar, if required under Federal Circuit Rule 46 – and unless the pro se party or attorney has entered an appearance in the case.

New Counsel on Appeal. New counsel on appeal should provide a copy of the entry of appearance form filed in this court to the lower court or agency to expedite service of the certified list and other communications.

Rule 47.4 Certificate of Interest

(a) Purpose; Contents. To determine whether recusal by a judge is necessary or appropriate, an attorney – except an attorney for the United States – for each party, including a party seeking or permitted to intervene, and for each amicus curiae, must file a certificate of interest. A certificate of interest must be in the form set forth in the appendix to these rules, and must contain the information below in the order listed. Negative responses, if applicable, are required as to each item on the form.

- (1) The full name of every party or amicus represented in the case by the attorney.
- (2) The name of the real party in interest if the party named in the caption is not the real party in interest.
- (3) The corporate disclosure statement prescribed in Federal Rule of Appellate Procedure 26.1
- (4) The names of all law firms and the partners and associates that have appeared for the party in the lower tribunal or are expected to appear for the party in this court.

(b) Filing. The certificate must be filed with the entry of appearance. The certificate – omitting the caption – must also be filed with any motion, petition or response and in each principal brief and brief amicus curiae.

(c) Changes. If any of the information required in Federal Circuit Rule 47.4(a) changes after the certificate is filed and before the mandate has issued, the party must file an amended certificate within 7 days of the change.

Rule 47.5. Statement of Related Cases

Each principal brief must contain a statement of related cases indicating:

- (a)** whether any other appeal in or from the same civil action or proceeding in the lower court or body was previously before this or any other appellate court, stating:
- (1) the title and number of that earlier appeal;
 - (2) the date of decision;
 - (3) the composition of the panel; and
 - (4) the citation of the opinion in the Federal Reporter and the U.S. Patents Quarterly, if published; and
- (b)** the title and number of any case known to counsel to be pending in this or any other court that will directly affect or be directly affected by this court's decision in the pending appeal. If there are many related cases, they

may be described generally, but the title and case number must be given for any case known to be pending in the Supreme court, this court, or any other circuit court of appeals.

Rule 47.6. Opinion and Order of the Court

- (a) Disposition of Appeal, Motion, or Petition; Precedential Effect.** Disposition of an appeal may be announced in an opinion; disposition of a motion or petition may be announced in an order. An appeal may also be disposed of in a judgment of affirmance without opinion pursuant to Federal Circuit Rule 36. A disposition may be cited as precedent of the court unless it is issued bearing a legend specifically stating that the disposition may not be cited as precedent.
- (b) Nonprecedential Opinion or Order.** An opinion or order which is designated as not to be cited as precedent is one unanimously determined by the panel issuing it as not adding significantly to the body of law. Any opinion or order so designated must not be employed or cited as precedent. This rule does not preclude assertion of claim preclusion, issue preclusion, judicial estoppel, law of the case, or the like based on a decision of the court designated as nonprecedential.
- (c) Request to Make an Opinion or Order Precedential; Time for Filing.** Within 60 days after any nonprecedential opinion or order is issued, any person may request, with accompanying reasons, that the opinion or order be reissued as precedential. An original and 6 copies of the request must be filed with the court. The request will be considered by the panel that rendered the disposition. The requestor must notify the court and the parties of any case that person knows to be pending that would be determined or affected by reissuance as precedential. Parties to pending cases who have a stake in the outcome of a decision to make precedential must be given an opportunity to respond. If the request is granted, the opinion or order may be revised as appropriate.
- (d) Public Records.** All dispositions by the court in any form will be in writing and are public records.

Practice Notes

Filing an Opinion. An opinion is issued when ready. No particular day of the week is considered a “down day.” An opinion is not issued on a holiday, as defined in Federal Rule of Appellate Procedure 26 and Federal Circuit Rule 26. The entry of judgment day is the day the opinion is filed with the clerk and mailed to the parties.

Availability of an Opinion. The court’s precedential and nonprecedential opinions are available in a variety of commercially available print and electronic media.

Subscriptions. Subscriptions to opinions are not available from the court, but are available from several commercial sources.

Information about an Opinion. A disposition sheet containing information about decisions rendered, opinions issued, and actions taken on petitions for rehearing is posted daily in the clerk’s office. The information about opinions is also available after 11:00 a.m. daily on a telephone recording; dial (202) 633-6002. On Fridays, the opinions for the entire week are included on the recording.

Information about opinions for the current and preceding week is concurrently maintained on the court’s electronic bulletin board. Call (202) 786-6584 or (202) 633-9608.

The court’s precedential opinions, rules, and other information are also available on the Federal Circuit web site: <http://www.fedcir.gov/index.html>

Copies of the court’s opinions also may be purchased from the administrative services office of the court for \$2.

Request to Make an Opinion or Order Precedential. It is improper to refer in a brief to a request to make an opinion or order precedential before the request has been acted on. The opinion or order that is subject to the request remains nonprecedential unless and until the court grants the request.

Rule 47.7. Attorney Fees and Expenses Incurred in This Court

(a) Time for Filing; Response.

- (1) **Generally.** The court may award attorney fees and expenses when authorized by law. An award may be made by the court on its own motion or on application of a party.
- (2) **Time for Filing.** An application for an award of attorney fees and expenses must be served and filed within the time prescribed by the statute authorizing the award. If the statute does not prescribe a time, the application must be made within 30 days after entry of the judgment or order denying rehearing, whichever is later. However, if a petition for writ of certiorari is filed, the application will not be due until 30 days after all proceedings in the Supreme Court are concluded.
- (3) **Response.** No response may be filed to an application for attorney fees and expenses unless directed by the court, but no application will be granted without the court giving the party an opportunity to submit a response.
- (4) **Award on the Court’s Motion.** A party awarded attorney fees and expenses by the court on its own motion must file and serve a bill of attorney fees and expenses containing the information required in

Federal Circuit Rule 47.7(b)(2)(A)-(C) with the bill of costs authorized by Federal Rule of Appellate Procedure 39. Any objection must be filed within the time prescribed in Federal Rule of Appellate Procedure 39.

(b) Content of Application.

(1) Application under the Equal Access to Justice Act.

An application for attorney fees and expenses under the Equal Access to Justice Act must be made on the form prescribed by the Administrative Office of the United States Courts (AO291). This form is reprinted in the appendix of forms and is available from the clerk on request.

(2) Other Applications. Each other application for attorney fees and expenses must cite the authority for an award and must indicate how the prerequisites for an award, including timeliness, are met. In addition, each application must contain a statement, under oath, specifying:

- (A) the nature of each service rendered;
- (B) the amount of time expended rendering each type of service; and
- (C) the customary charge for each type of service rendered.

Rule 47.8. In Camera Proceedings

On motion showing that the interest of justice requires, the court may sit in camera, seal its record, or both.

Rule 47.9. Petition for Judicial Review Under 5 U.S.C. § 7703(d)

(a) Time for Filing. A petition for review of a final order or decision of the Merit Systems Protection Board or of an arbitrator pursuant to 5 U.S.C. § 7703(d) must be filed by the Director of the Office of Personnel Management within 60 days after the date the Director received notice of the final order or decision of the Board or arbitrator.

(b) Contents. The Director's petition must contain:

- (1) a statement of jurisdiction (see Federal Rule of Appellate Procedure 28(a)(4));
- (2) the Director's determination that the Board or arbitrator erred in interpreting a civil service law, rule, or regulation affecting personnel management and the reasons supporting the determination;

(3) the Director's determination that the decision or order of the Board or arbitrator will have a substantial impact on a civil service law, rule, regulation, or policy directive, and the reasons supporting the determination; and

(4) an appendix including a copy of the order or decision for which review is sought and any relevant portion of the record on review; the appendix may also include documents not part of the record on review that are relevant to the determination that the decision will have substantial impact.

(c) Length of Petition, Answer and Reply; Separate Brief.

A petition or answer must not exceed 20 pages. A reply must not exceed 10 pages. A separate brief supporting a petition, answer, or reply is not permitted.

(d) Service and Filing; Number of Copies. The Director must file with the clerk an original and 3 copies of the petition with proof of service and must serve a copy of the petition on the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator.

(e) Notice of Docketing. On receipt, the clerk will enter the petition on the miscellaneous docket and notify the Director, the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator of the docketing date.

(f) Appearance by Other Than the Named Respondent. The Board or arbitrator and any other party to the proceeding desiring to participate in the proceeding in this court must enter an appearance. Anyone entering an appearance will be deemed a respondent.

(g) Answer; Appendix; Reply. Within 21 days after service of a petition, any respondent may file an answer. The answer may include an appendix containing any relevant portion of the record on review not included in the appendix to the petition; the appendix may also include documents or affidavits not part of the record on review that are relevant to the determination that the decision will have substantial impact. Within 14 days after service of an answer, the Director may file a reply

(h) Action by the Court. Granting a petition for review is at the discretion of the court. On receipt of an order granting review, the clerk must enter the petition for review on the general docket. The petition for review will then proceed as if filed under Federal Rule of Appellate Procedure 15.

Practice Note

Form Requirements. See Federal Circuit Rule 32(f) for form requirements for petitions and other documents.

Rule 47.10. Dismissal of a Bankruptcy Stay Case

An appeal stayed in accordance with the bankruptcy stay provisions of 11 U.S.C. § 362 may be dismissed by the clerk without prejudice to the appellant reinstating the appeal within 30 days after the stay is lifted or the bankruptcy proceeding ends.

Rule 47.11. Quorum

A quorum is a simple majority of a panel of the court or of the court en banc. If a judge of a panel that has heard oral argument or taken under submission any appeal, petition, or motion is unable to continue with consideration of the matter because of death, illness, resignation, incapacity, or recusal, the remaining judges will determine the matter if they are in agreement and no remaining judge requests the designation of another judge. If the remaining judges are not in agreement or if any remaining judge requests the designation of another judge, the remaining judges will promptly advise the chief judge who will secure another judge to sit with the panel. The clerk will advise the parties of the designation, but no further argument will be had or briefs received unless ordered by the court.

Rule 47.12. Action for Judicial Review Under 38 U.S.C. § 502

- (a) **Time for Filing.** An action for judicial review under 38 U.S.C. § 502 of a rule and regulation of the Department of Veterans Affairs must be filed with the clerk within 60 days after issuance of the rule or regulation or denial of a request for amendment or waiver of the rule or regulation.
- (b) **Parties.** Only a person or persons adversely affected by the rule or regulation or the rulemaking process may bring an action for judicial review. The Secretary of Veterans Affairs must be named the respondent.
- (c) **Contents.** The action for judicial review must describe how the person or persons bringing the action are adversely affected and must specifically identify either:
- (1) the rule, regulation, opinion, or order of the Department of Veterans Affairs separately stated and published in the Federal Register pursuant to 5 U.S.C. § 552(a)(1) on which judicial review is sought; or
 - (2) the notice-and-comment rulemaking process by the Department of Veterans Affairs pursuant to 5 U.S.C. § 553 on which judicial review is sought.

FEDERAL RULES OF APPELLATE PROCEDURE

FEDERAL CIRCUIT RULE

Rule 48. Masters

- (a) **Appointment; Powers.** A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:
- (1) regulating all aspects of a hearing;
 - (2) taking all appropriate action for the efficient performance of the master's duties under the order;
 - (3) requiring the production of evidence on all matters embraced in the reference; and
 - (4) administering oaths and examining witnesses and parties.
- (b) **Compensation.** If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

(d) Procedure. Except as provided in this rule, the procedures applicable to an action for judicial review under 38 U.S.C. § 502 are the same as those for a petition for review under Federal Rule of Appellate Procedure 15.

Rule 49. Seal of the Court

The clerk is the keeper of the seal, which is the means of authentication of all records and certificates issued from this court.

Rule 50. Employee and Former Employee

No employee of the court may engage in the practice of law. No former employee of the court may participate or assist, by representation, consultation, or otherwise, in any case that was pending in the court during the period of employment. For purposes of this rule, a person serving at the court as an intern, whether in a judge's chambers or otherwise, is considered an employee of the court, whether such service is for pay, for law school credit, or voluntary.